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TO: Examiner Kheim D. Nguyen

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**CONFIRMATION
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DATE: January 3, 2005

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MESSAGE: Attached please find: Transmittal Form; Response to Restriction Requirement; and Revocation and Substitution of Power of Attorney

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TRANSMITTAL
FORM

(to be used for all correspondence after initial filing)

Total Number of Pages In This Submission

Application Number	10/661,793
Filing Date	09/12/2003
First Named Inventor	Chi-An Kao
Art Unit	2823
Examiner Name	Khlem D. Nguyen
Attorney Docket Number	TS01-1037

ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
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<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Duane Morris LLP		
Signature			
Printed name	Mark J. Marcelli		
Date	January 3, 2005	Reg. No.	38,593

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Attorney Docket No. N1085-90149
TSMC2001-1037

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Chi-An Kao

Serial No.: 10/661,793

Filed: September 12, 2003

Group Art Unit: 2823

Examiner: Khiem D. Nguyen

Confirmation No.: 8353

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For: CONSTANT AND REDUCIBLE
HOLE BOTTOM CD IN VARIABLE
POST-CMP THICKNESS AND AFTER-
DEVELOPMENT-INSPECTION CD

Examiner Khiem D. Nguyen
Mail Stop Non-Fee Amendment
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03 Jan 2005
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Mark J. Marcelli

RESPONSE TO RESTRICTION REQUIREMENT

Dear Sir:

Responsive to the Restriction Requirement in the Office Action dated December 2, 2004,
please examine the application in view of the above.

The Examiner requires an election between:

Group I: claims 1-7, drawn to a method for creation of an opening of controllable format
through a layer of insulation material, classified in class 438, subclass 638; and

Group II: claims 8-14, drawn to a system for creation of an opening of controllable
format through a layer of insulation material, classified in class 257, subclass 774.

Applicants hereby elect Group II, claims 8-14 for a system for creation of an opening of
controllable format through a layer of insulation material. This election is made with traverse.

SD\61256.1

Reply of January 3, 2005
Office Action Date: December 2, 2004

Attorney Docket No. N1085-90149
TSMC2001-1037

The Examiner alleges that the inventions (Group I and Group II) are distinct, each from the other because of the following reasons: Inventions II and I are related as process of making and product made. Applicants respectfully disagree. In support of the restriction requirement, the examiner cites MPEP §806.05(f), which reads in part:

A process of making and a product made by the process can be shown to be distinct inventions if either or both of the following can be shown: (A) that the process as *claimed* is not an obvious process of making the product and the process as *claimed* can be used to make other and different products; or (B) that the product as *claimed* can be made by another and material different process.

As acknowledged by the Examiner, claims 1-7 are drawn to a method for a creation of an opening. Claims 8-14 are drawn to a system for a creation of an opening. The "product" referred to by the Examiner is the openings through the layer of etched resist material. Applicants respectfully submit that MPEP §806.05(f) would be applicable if the product, a semiconductor device including the formed openings, and a process for making the product, were being claimed. The claimed groups identified by the Examiner, however, ARE NOT directed to a process of making and a product made by the process, as required for restriction under MPEP §806.05(f).

In contrast, the claim groups identified by the Examiner are directed to a method for a creation of an opening and a system for creation of the opening, as conceded by the Examiner in his description of the Groups of claims. The product made by the method of claims 1-7 is an opening through an insulation layer, not a system for creation of an opening as claimed in claims 8-14. Therefore, the application of MPEP §806.05(f) is inappropriate because the claim groups are not directed to a product and process for making the product. As such, the restriction requirement is inappropriate.

In view of the foregoing, Applicants submit that the restriction requirement should be withdrawn, and that claims 1-14 should be examined. Withdrawal of the restriction requirement is respectfully requested.

Respectfully submitted,



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Attorney for Applicant(s)

DATE: 1-3-05
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